U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 34693726

Date: DEC. 20, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is a dancer and dance instructor who seeks first preference immigrant classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or as someone who initially satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). Namely, the Director determined that the Petitioner did not satisfy any of the six criteria listed at 8 C.F.R. § 204.5(h)(3)(i), (iii)-(v), (vii), and (viii). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner claims that he meets four of the ten criteria.[1]

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal because the Petitioner did not establish that he meets the criteria at 8 C.F.R. § 204.5(h)(3)(i) and (iv), which pertain to receipt of lesser nationally or internationally recognized awards and participation as a judge of the work of others, respectfully.

As noted above, the Petitioner also claims that he meets the criteria at 8 C.F.R. § 204.5(h)(3)(iii) and (vii), which relate to published material about the Petitioner in major trade journals or major media and the display of the Petitioner's work in artistic exhibitions, respectively. However, the Petitioner

[1] The Petitioner did not, either at the time of filing or subsequently, in response to the Director's request for evidence (RFE), include the criteria listed at 8 C.F.R. § 204.5(h)(3)(v) and (viii) as part of his eligibility claim. In the denial, however, the Director addressed these criteria, along with the four that the Petitioner specifically listed in support of his claim as an individual of extraordinary ability. Regardless, because the Petitioner does not address these two criteria on appeal, we need not consider them in determining his eligibility. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

would not establish that he met three out of ten criteria even if he established that he met both of these criteria. As such, we need not address either criterion, nor do we need to provide the type of final merits determination referenced in *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination). Accordingly, we will reserve these issues. *See INS v. Bagamasbad,* 429 U.S. 24, 25-26 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

## I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that:

- They have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- They seek to continue work in their field of expertise in the United States; and
- Their work would substantially benefit the country.

Section 203(b)(l)(A)(i)-(iii) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115; *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

The Petitioner is a professional ballroom dancer and instructor who claims to be "highly respected and well-known" within the ballroom dance community. He is currently using his skills as a dancer to provide professional services as a dance instructor.[2] The Petitioner does not claim or submit evidence to show that he received a major, internationally recognized award. He must therefore provide evidence showing that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x). On appeal, the Petitioner claims that he meets the elements of four of these criteria, which are summarized below:

[2] The Petitioner maintains that he is eligible for this classification based on his extraordinary ability as a dancer and dance instructor. *See* 6 USCIS Policy Manual, F.2(A)(2), https://www.uscis.gov/policy-manual.

- (i), Recipient of lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the Petitioner;
- (iv), Participation as a judge of the work of others; and
- (vii), Display of the Petitioner's work at artistic exhibitions.

A. Evidentiary Criteria

1. Evidence of Lesser Nationally or Internationally Recognized Awards

First, we will address the criterion at 8 C.F.R. § 204.5(h)(3)(i), which requires evidence that the Petitioner has received lesser nationally or internationally recognized awards for excellence in his field of endeavor.

In the denial, the Director recognized that the Petitioner was a recipient of awards in the United States and Ukraine, noting that some of the awards were related to his employer, [redacted] However, the Director noted that recognition of some of these awards was in the form of local newspaper and television coverage, thereby indicating that the Petitioner's awards were regional, local, or employer-based and were not nationally or internationally recognized. The Director also declined to consider awards the Petitioner earned in the Ukraine in youth or junior competitions, explaining that the Petitioner earned these awards as an amateur and not as a professional dancer.

We disagree with the Director's blanket dismissal of evidence based solely on the limitation that certain awards were earned at the youth or junior level. While national or international recognition is most often associated with awards given at the highest level in a given field, the Petitioner is not required to show that his awards were open to all members of his field to satisfy this element of the criterion. *See* 6 USCIS Policy Manual, F.2(B)(1), https://www.uscis.gov/policy-manual. That said however, neither on appeal nor in the RFE response has the Petitioner specifically discussed the awards he won at the youth level; nor did the Petitioner provide additional evidence concerning these awards in his RFE response. As such, the Petitioner has not established that the foreign awards in question have national or international recognition.

Rather, on appeal, the Petitioner highlights the "national scope" of the following competitions: [redacted] the [redacted] and the [redacted][3] We note, however, that a competition's national scope is not synonymous with having national (or international) recognition. Likewise, the fact that a competition is "nationwide" and is open to "hundreds of competitors from around the world" is also not evidence of its national or international recognition. And although the Petitioner points to support letters "confirming [his] participation and first place in the [redacted] merely winning the award is not sufficient without a showing of the award's national or international recognition.

In addition, the Petitioner claims that he is among the "small percentage of individuals who have risen to the very top of their field of endeavor." This argument pertains to the broader question of whether

[3] In the appeal brief, the Petitioner refers to this competition as the [redacted] However, the printout submitted as Exhibit D of the RFE response reflects the name as indicated above.

the Petitioner has established that he is an individual of extraordinary ability. However, to warrant a comprehensive analysis addressing this broader issue, the Petitioner must first establish that he is either the recipient of a one-time achievement award or that he meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). Here, the Petitioner claims that he satisfied the latter component, which is based, in part, on the claim that he received lesser nationally or internationally recognized awards in his field of endeavor. As discussed above, the Petitioner has not provided sufficient evidence establishing that the awards he received have national or international recognition. Therefore, he has not satisfied this criterion.

2. Evidence of Participation as a Judge of the Work of Others

The other criterion we will address is listed at 8 C.F.R. § 204.5(h)(3)(iv) and requires evidence that the Petitioner participated as a judge of the work of others in his field.

The only evidence the Petitioner submitted to claim that he satisfied this criterion is a letter from Mr. [redacted] who discussed his role as an organizer of the [redacted] 2020, a two-day international dance competition which he stated took place on [redacted] Mr. [redacted] expressed gratitude for the Petitioner's participation and stated that the Petitioner was invited to judge participants in the [redacted] category of the competition. The Petitioner also provided a printout of the competition's homepage, which included basic information about the competition, such as dates, time, and location, and listed Mr. [redacted] as one of the six event organizers. We note, however, that the printed webpage contains a discrepancy regarding the dates of the competition, which leads us to question the reliability of the information contained in the printout. Namely, while the dates provided by Mr. [redacted] match those listed on the home page of the competition's promotional logo, different dates are contained elsewhere in the same printout. For instance, the bottom of the page lists the event date as [redacted] 2020" and not [redacted] as Mr. [redacted] stated in his letter. The "Event Schedule Details," which are listed on the right-hand side of the same page, show [redacted] 2020 07:00 PM [redacted] 2020 11:59 PM" as the dates of the event. We note that neither Mr. [redacted] nor the dance competition promotional logo mentioned the [redacted] dates, thus calling into question the validity of Mr. [redacted] claims. This also calls into question the validity of the information provided in the website printout, which contains the names of the individuals or organizations that are claimed as the event organizers. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that inconsistencies in the record must be resolved with independent, objective evidence).

In addition, Mr. [redacted] letter does not contain specific, detailed information reflecting probative evidence of the Petitioner's judging experience. For example, the letters do not include names of individuals or dates of judging. In addition, the Petitioner did not offer any evidence, such as candidate evaluation records, to corroborate the claims in the letter. The Petitioner's submission of one letter making vague claims about his purported judging activity is insufficient to satisfy this criterion.

On appeal, the Petitioner merely argues that he is not required to provide "extensive documentation" to show that he meets a given criterion. While that may be true, we find that the evidence the Petitioner submitted was deficient and does not meet the preponderance of the evidence standard. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. As stated, the letter from Mr. [redacted] lacks critical information about the Petitioner's judging experience, and the printout from the competition's website contains

inconsistent information about the competition's event dates, which leads us to question the validity of the printout and information contained therein.

For the reasons discussed above, we find that the Petitioner has not satisfied the judging criterion.

B. Previously Approved O-1 Nonimmigrant Petition

Lastly, we acknowledge that evidence in the record shows that the Petitioner was previously granted O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, this approval does not preclude denial of an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. USCIS is not precluded from denying a Form I-140 immigrant petition after approving a nonimmigrant petition. *See, e.g., Sunlift Int'l v. Mayorkas, et al.*, 2021 WL 3111627 (N.D. Cal. 2021); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41. We further note that each petition filing is a separate proceeding with a separate record. In this instance, the previously filed O-1 petition approval that the Petitioner has referenced is not in the record that is before us. In making a determination of statutory eligibility, we are limited to the information contained in that individual record of proceedings. 8 C.F.R. § 103.2(b)(16)(ii).

## III. CONCLUSION

As stated earlier, the Petitioner would not establish that he met three out of ten criteria even if he established that he met the elements of the two remaining criteria listed at 8 C.F.R. § 204.5(h)(3)(iii) and (vii). As such, we need not address the Petitioner's claims regarding these criteria, nor do we need to provide the type of final merits determination referenced in *Kazarian,* 596 F.3d at 1119-20. Because these issues are not dispositive of this appeal, we will reserve these issues. *See INS v. Bagamasbad,* 429 U.S. at 25-26.

In sum, the Petitioner has not shown that he met either a one-time award, or three of ten initial criteria. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); see also section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that he is one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

**ORDER:** The appeal is dismissed.